U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 14 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to Philip Guo of Becker & Poliakoff, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 CFR 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 CFR 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner is a practitioner of various forms of Wushu, or Chinese martial arts. The regulation at 8 CFR 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award).

Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

A certificate from the Ministry of Culture of the People's Republic of China indicates that the petitioner "won the Championship in the Category of Wide-Edged Sword at the Zibo International Martial Arts Championship" in August 1998. Another certificate, from the Sports Commission of the People's Republic of China, indicates that the petitioner "won the Championship in the Category of Tai Chi Boxing at the National Martial Arts Competition" in January 1999. These championships, acknowledged at the national level, appear to satisfy this criterion, although the record reveals issues to be discussed in greater detail below. Other prizes and titles claimed by the petitioner are less persuasive, as they are either provincial in nature or else they do not appear to represent prizes or awards at all (such as a "Certificate of Participation" from a 2000 tournament).

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

The only membership claimed in the initial filing is the petitioner's membership on the Referee Committee of the Martial Arts Association of Shandong. This association, from its name, appears to be provincial rather than national or international, and the petitioner has not shown that its members are selected from throughout China rather than only from Shandong Province. The petitioner has not shown that outstanding achievements are a requirement for membership in the association or for election to the Referee Committee.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

Upon the petitioner's completion of "the Advanced Training Program for Senior Referees," the Sports Commission of the People's Republic of China granted the petitioner "the rank title of National Martial Arts Referee, First Class," in 1994, 1995 and 1996. The certificates do not establish to what extent, if any, the petitioner actually acted as a judge at a national level during those years.

A certificate from the same Sports Commission indicates that the petitioner "has been elected the Referee of the Year for the year of 1993 for his professionalism and ethics." The significance of the

"Referee of the Year" title is not clear, considering that he earned the title before he had completed his "Advanced Training Program for Senior Referees" to become a "National Martial Arts Referee, First Class" in 1994.

Every martial arts competition, at every level, involves a referee or similar officiating party. To say that every such referee has earned national acclaim would involve an unreasonably broad interpretation of the regulatory language. The petitioner must demonstrate that he has acted as a judge at major national or international competitions or tournaments, and that his work as a judge is reflective of sustained national acclaim rather than a routine or random refereeing assignment.

An undated certificate from the Chinese Wushu Association indicates that the petitioner "has passed the Wushu Dan Examination" and achieved the fifth Dan in his sport. Prior counsel has cited this as evidence of acting as a judge but has not explained how reaching the fifth Dan constitutes judging the work of others. We note that the Wushu Dan Certificate is a "form" document with the petitioner's name typed, and Dan number handwritten, into blank spaces, indicating that Dan assignments of this kind are sufficiently commonplace to merit such a form.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

Prior counsel asserts that the petitioner satisfies this criterion via four articles that the petitioner wrote, which were published between 1996 and 1999. While there is a separate criterion relating to published scholarly articles by the alien,[1] prior counsel has specified that these articles should be considered under original contributions of major significance. Because publication itself does not demonstrate or bestow major significance, the burden is on the petitioner to show that his articles have had major significance in the field.

The director informed the petitioner that the initial evidence was not sufficient to establish eligibility. The director instructed the petitioner to submit additional documentation. In response, the petitioner has submitted three witness letters.

Li Jie, director of the Martial Arts Association of China, states that the petitioner is "one of the best known martial arts practitioner[s], coach[es], and researcher[s] in China. . . . [The petitioner] has served as [a] panel Judge on many occasions." Li Jie adds that the petitioner "was awarded the Title of National Model Martial Artist, the highest honor for a martial arts practitioner in China." Li Bing, chairman of the Martial Arts Federation of Asia, also states that the petitioner's "Title of National Model Martial Artist" is "the highest honor for a sportsman in China," and that the petitioner "is one of the best martial artists in the field." The third letter is from Wang Xuefeng, identified only as "The president of an association" (the letterhead inscription is in Chinese with no translation), who states that the petitioner "is one of the best known martial artists in China" who has earned "fame as a nationally and internationally renowned Grand Master of martial arts."

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[1] It is not clear that the petitioner's articles are scholarly in nature. The articles are accounts of the petitioner's own experiences as well as broadly instructional discussions of martial arts techniques.

The above three letters exhibit numerous similarities, suggesting common authorship. All three letters are printed in the same type font. Two contain the same kind of typographical error (dropped capital letter), with one name printed [redacted] and another [redacted] and in all three letters, spaces are frequently omitted after punctuation marks (e.g., ". . . practitioner,coach,and researcher in China.In 1997 . . .). All three letters offer very general assertions about the petitioner's acclaim, with no specific details except for information that was already present in the record (such as the dates of particular awards). These textual and stylistic similarities raise questions about the origin of the letters that we cannot ignore. We note that the letters are not identified as translations of Chinese-language originals, and each letter bears what is represented as the signature of its author. Thus, the similarities cannot be attributed to the use of a common translator for all three letters.

There are other irregularities as well. For instance, the letterhead used on the various letters shows degradation and loss of detail consistent with fax transmission or several generations of photocopying, but the text of the letters shows no such image degradation. Wang Xuefeng's vague identification as the "president of an association" also raises questions.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The director denied the petition, stating that the evidence of record does not consistently establish sustained acclaim at the national or international level. The director also noted that the petitioner's past achievements are in athletics whereas the petitioner's current career appears to be as an entertainer.

On appeal, on the Form I-290B Notice of Appeal, counsel has asserted that the petitioner has satisfied several additional criteria:

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*
>
> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*
>
> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

On the appeal form, counsel did not elaborate significantly on the above claims, stating instead that a brief was forthcoming. Counsel has since provided such a brief, but the brief does not discuss these three newly claimed criteria. We note that counsel has claimed that the petitioner has displayed his work "at exhibitions to promote martial arts as a mainstream sports activity at national and international sports contests." Every competitive athlete competes in front of some kind of

audience; this does not mean that athletic competition constitutes an artistic exhibition or showcase. The petitioner has not shown that athletic events in which he participates draw substantially greater crowds and/or publicity than other comparable events, on the basis of his involvement.

Counsel asserts that the director "has not properly considered evidence . . . [of the petitioner's] recognition as one of China's 10 Best Sport Stars." Nothing in the initial submission indicated that the petitioner had won such recognition. Only on appeal has the petitioner submitted a copy of a certificate from the National State Sports Commission of China, said to name the petitioner among "China's Ten Best Sports Stars." With regard to this claim, we note that counsel asserts that the petitioner "was recognized by the Chinese Government as one of the 'Ten Best Sports Stars' in 1997, the highest honor for Chinese athletes." This assertion directly contradicts the prior letters attributed to Li Bing, which had indicated that the "Title of National Model Martial Artist" is "the highest honor for a sportsman in China," and Li Jie, who used almost identical language. Neither the petitioner nor counsel explains why, if the "Ten Best" certificate is "the highest honor" for Chinese Athletes, this honor was not even mentioned in the petitioner's initial submission, even though he is said to have received the undated certificate in 1997, four years before he filed the petition in 2001. Counsel is clearly aware of Li Jie's letter, because a copy is included with the appellate brief, but counsel neither addresses the contradictory statements about what is China's highest honor for athletes, nor explains why the petitioner's "Ten Best" award, a pivotal exhibit on appeal, was not even mentioned even obliquely in the petitioner's initial submission.

The above paragraph describes only one of several instances on appeal in which counsel maintains that the director erred in failing to consider evidence which, at the time of the director's decision, had not yet been submitted. For example, counsel states "[t]he Director ignores the fact [that the petitioner] won more than sixty (60) international, national and local martial arts tournaments . . . from 1974 to 2000." The petitioner's initial submission contained references to only seven identified competitions. The director could have "ignored" evidence of other competitions only if it had been in the record, which it plainly was not. The director's failure to extrapolate dozens of other awards, or to anticipate the future submission of evidence that the petitioner had, at the time, not even mentioned, is not error by any rational definition of the term.

The additional awards and honors claimed on appeal, which were inexplicably not mentioned in the initial filing, address a criterion that we consider the petitioner to have already fulfilled through his initial evidence. Regardless of the quantity of such awards, none of them qualify as major international awards and therefore the petitioner must satisfy at least two more criteria to qualify for the highly restrictive classification sought. Counsel makes several assertions about the newly claimed awards, such as the number of competitors, but counsel does not provide corroborating evidence or even identify the source of the cited figures. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel states that the petitioner "is certified as Wushu 7th Dan by the Chinese Government," and that "only a fraction of a percent [of Chinese martial artists] have achieved this distinctive

certification." Counsel maintains that this ranking constitutes membership in an association that requires outstanding achievements of its members. Leaving aside the issue of whether a hierarchical ranking can be considered a membership in an association, the record does not specify the criteria for elevation to 7th Dan, and therefore the petitioner has not shown that this ranking is indicative of national or international acclaim. Furthermore, at the time of filing, the evidence in the record identified the petitioner as holding 5th Dan certification. Counsel states that the petitioner reached 7th Dan in 2000, before the 2001 filing of the petition, but the record offers no corroboration for this claim. Subsequent promotions or qualifications cannot retroactively establish eligibility as of the petition's filing date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Regarding the petitioner's work as a judge, counsel asserts that the petitioner "has performed as Chief Judge, Deputy Chief Judge, or Judge in more than a hundred (100) international, national, regional and local martial arts tournaments." Counsel lists seven events in 1999 and 2000 in which the petitioner served as chief judge/referee, and counsel asserts that in that capacity the petitioner supervised between 40 and 60 Deputy Chief Judges and Judges. The petitioner submits no evidence to support any of counsel's specific claims in this area, and the only documentary evidence submitted regarding any of these seven events is a photograph of a "Chief Referee" tag issued by the "Organizing Committee of China Qingdao 99 International Wushu Championship." Most of the petitioner's claimed judging work is wholly undocumented, and most of the claimed evidence that exists in the record consists of photographs which, at best, establish the petitioner's presence at the events.

Instead of documentary evidence, the petitioner offers testimonial evidence in the form of letters from officials of various martial arts organizations. Counsel states that these letters establish the petitioner's contributions of major significance. One of the letters is a second copy (this time in color) of the letter attributed to Li Jie. We have addressed, above, the serious questions raised by this letter.

Wai Hung, president of the United Kung-Fu Federation of North America, states that the petitioner has won significant awards and acted as a judge or referee at major international events. Pui Chan, grandmaster of the Shaolin Northern Praying Mantis Martial Arts System (which operates several martial arts schools in the United States, Brazil and Switzerland), similarly focuses on the petitioner's competitive performance and work as a judge. The letters do not identify any original contributions of major significance to the field. Success in one's field, whatever its magnitude, is not inherently an original contribution of major significance. Winning prizes and acting as a judge, covered by other criteria, are likewise not presumptively considered original contributions of major significance. If the fulfillment of one criterion automatically implied fulfillment of another, it would rather defeat the purpose of delineating separate criteria. The record does not show how the petitioner has changed or affected his sport in a way that other champions and judges have not done.

The new witnesses also discuss the petitioner's work as a martial arts instructor, a facet of the petitioner's career that did not figure in the petitioner's initial submission. Counsel states that the petitioner will benefit the United States through his work as an instructor, and the petitioner submits letters from his pupils showing that they, as individuals, have benefited from the petitioner's instruction. The petitioner's reputation among his students is not tantamount to sustained national or international acclaim.

In sum, the petitioner has at best satisfied two of the ten criteria at 8 CFR 204.5(h)(3), specifically those pertaining to lesser awards and acting as a judge of the work of others. Even then, there remain unresolved credibility issues, such as the irreconcilable contradiction as to which award is actually China's highest honor and the anomalous letters submitted prior to the denial of the petition. These issues take on even greater significance when one considers that a major portion of the petitioner's submission on appeal consists of new evidence which was never mentioned prior to the denial of the petition, such as the "Ten Best" title. Such discrepancies call for rigorous independent verification of the evidence of record, in the event that the petitioner should again seek immigration benefits using that evidence.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as an athlete to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.